

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4)
5 In the Matter of the)
6 2021 Redistricting Plan.)
7)

8) Case No. 3AN-21-08869CI

9 **ALASKA REDISTRICTING BOARD’S OPPOSITION TO**
10 **EAST ANCHORAGE PLAINTIFFS’**
11 **MOTION TO AMEND APPLICATION TO ASSERT ADDITIONAL CLAIMS**
12 **AND OPPOSITION TO MOTION TO ADMIT EXPERT AFFIDAVIT**

13 The Alaska Redistricting Board (“Board”) opposes the East Anchorage
14 Plaintiffs’ Motion to Amend Application to Expand Equal Protection Claim to Include
15 Dilution Based on Race Due to Newly Discovered Evidence dated January 25, 2022
16 (“East Anchorage’s Motion”), and Motion to Admit Expert Affidavit of Erin Barker of
17 same date. East Anchorage’s Motion should be denied because it is: (1) based entirely
18 on a false factual premise, (2) extremely prejudicial to the Board, (3) not supported by
19 good cause or excusable neglect, and (4) futile based on their own expert testimony of
20 Dr. Hensel, which shows a race dilution claim is meritless.

21 **I. INTRODUCTION**
22

23 What the East Anchorage Plaintiffs contend is “new” is actually Census data that
24 they simply do not understand. The same U.S. Census Bureau data has been publicly
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1 available to the entire world since August 12, 2021.¹ The census form asked: “Is Person
2 1 of Hispanic, Latino, or Spanish origin?”² The census form also asked the person to
3 identify their race.³ Data from these two questions allows two calculations depending
4 on whether you consider someone who identifies as “white with Hispanic heritage” to
5 be “white” or “minority.”⁴ This is a debated topic in demographic circles. The default
6 tab on AutoBound Edge counts anyone who checks “white” as being white, whereas
7 the Board’s staff used the slightly more inclusive computation that also counts “white
8 with Hispanic heritage” in the minority column, as was suggested by the Alaska
9 Department of Labor.⁵ The difference can be a small fraction up to a percentage point
10 or so, depending on the demographics of a district.

11 Exhibit 6004 was not produced by the Board.⁶ Rather, Ms. Wells went to the
12 Board office and apparently printed a data sheet using the default setting in AutoBound

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¹ ARB000007; THE UNITED STATE CENSUS BUREAU, *2020 Census Timeline of Important*
19 *Milestones*, available at [https://www.census.gov/programs-surveys/decennial-census/decade/](https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html)
20 [2020/planning-management/release/timeline.html](https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html).

21 ² U.S. CENSUS BUREAU, *Informational Copy of 2020 Census form*, p. 2, available at
22 [https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/](https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/questionnaires-and-instructions/questionnaires/2020-informational-questionnaire-english_DI-Q1.pdf)
[questionnaires-and-instructions/questionnaires/2020-informational-questionnaire-english_DI-](https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/questionnaires-and-instructions/questionnaires/2020-informational-questionnaire-english_DI-Q1.pdf)
[Q1.pdf](https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/questionnaires-and-instructions/questionnaires/2020-informational-questionnaire-english_DI-Q1.pdf).

23 ³ *See id.*, p. 2.

24 ⁴ *See* Aff. of Peter Torkelson, dated Jan. 27, 2022, ¶ 4, attached hereto as **Exhibit A**.

25 ⁵ *See* Torkelson Aff. ¶¶ 5-6.

26 ⁶ *See* Aff. of TJ Presley, dated Jan. 26, 2022, ¶ 8, attached hereto as **Exhibit B**; Aff. of
Matt Singer, dated Jan. 26, 2022, ¶ 2, attached hereto as **Exhibit C**.

1 Edge, which excludes “white with Hispanic heritage” from its count of minority voters.⁷
2 Dr. Chase Hensel, East Anchorage’s expert, attached that sheet printed by Ms. Wells as
3 Exhibit 3 to his affidavit.⁸ To rebut his vague conclusions, the Board’s Executive
4 Director simply took Dr. Hensel’s data and made some comparisons in his supplemental
5 affidavit.⁹ The idea was simply to make an apples to apples comparison showing Dr.
6 Hensel was not correctly reading the data he was provided by Ms. Wells.
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9 Upon Ms. Wells’s accusation that something sinister had occurred, the data was
10 reviewed and this distinction was observed. Rather than get into a squabble about it
11 during trial, the Board agreed to strike two paragraphs from Mr. Torkelson’s
12 supplemental affidavit.¹⁰ After all, the underlying numbers are those of the U.S.
13 Census, nothing the Board created.¹¹ Ms. Wells is now making unsubstantiated
14 accusations based on her own misunderstanding of the software and its nuances.
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16 The Board did not hide U.S. Census data. For example, it offered a summary of
17 data as Trial Exhibit 1007. Notably, Valdez’s Expert Kimball Brace prepared a
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21 ⁷ See Presley Aff. ¶ 8.

22 ⁸ See Aff. of Dr. Chase Hensel, dated Jan. 14, 2022, p.13, ¶ 60, n.22; Presley Aff. ¶ 8;
Singer Aff. ¶ 2.

23 ⁹ Torkelson Aff. ¶ 10; *see also* Supplemental Aff. of Peter Torkelson, dated Jan. 20, 2022
24 ¶¶ 34-35.

25 ¹⁰ Trial Tr. Jan. 21, 2022, 109:20-110:1 (all trial transcript pages referenced are attached
hereto as **Exhibit F**).

26 ¹¹ Presley Aff. ¶¶ 5, 7, 8.

1 demographic table marked as Exhibit EE to his affidavit.¹² Both the Board’s trial
2 exhibit and Mr. Brace’s exhibit reflect the same approach to calculating minority voting
3 age population, inclusive of those who identify as both white and having Hispanic
4 heritage.¹³ Only Dr. Hensel used the default AutoBound data instead of the more
5 inclusive data from the U.S. Census.
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7 All of those points aside, the data does not change anything of substance. South
8 Muldoon is a solidly majority white district under either calculation (only 43.65%
9 minority on the Board’s Exhibit 1007; or 42.14% minority on East Anchorage’s Exhibit
10 6004).¹⁴ South Eagle River is a majority white district (23.09% minority on Exhibit
11 1007; 21.06% on Exhibit 6004). Combining two majority white districts is not racial
12 dilution. East Anchorage’s new allegation is that because 43.65% of the voters in South
13 Muldoon are minority, they had an equal protection right to be paired with a
14 neighboring North Muldoon district that is a majority minority, so as to create a majority
15 minority senate district. No case supports such a notion.
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18 If we take the leap and assume that all non-white voters are politically cohesive
19 with each other, which Dr. Hensel disagreed with and the U.S. Supreme Court directs
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23 ¹² Aff. of Kimball Brace, dated Jan. 18, 2022, at Ex. EE, attached hereto as **Exhibit D**.

24 ¹³ Compare Brace Aff. Ex. EE (**Exhibit D**) with Trial Ex. 1007, attached hereto as
25 **Exhibit E**. See also Torkelson Aff. ¶ 7.

26 ¹⁴ Torkelson Aff. ¶ 11.

1 us not to do,¹⁵ the two districts in Anchorage that truly are high-minority populations
2 (North Muldoon and Mountain View) were each paired in a manner that created
3 majority-minority senate districts.¹⁶ In other words, if high mixed minority districts do
4 have an equal protection right, the Plan adopted by the Board protects that right by
5 pairing North Muldoon with Russian Jack and Mountain View with Downtown,
6 creating two senate districts in which the majority of voters are minority.¹⁷
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9 In their myopic quest to secure a particular political outcome by locking in a
10 North Muldoon-South Muldoon senate seat, the East Anchorage Plaintiffs ignore the
11 ripple effect on other districts in East Anchorage, all of which have a high percentage
12 of minorities. Do the 43% minority voters in South Muldoon have an equal protection
13 right to be paired with North Muldoon that trumps the rights of Russian Jack, which is
14 49.82% minority?¹⁸ Out of 16 districts in Anchorage, South Muldoon ranks 8th out of
15 16 as to percentage of minority population.¹⁹
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17 This data kerfuffle only further highlights how absurd East Anchorage's new
18 underlying contention is. To believe their case, the Court would have to accept that
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22 ¹⁵ Trial Tr. Jan. 21, 2022, 59:7-23; *see also League of United Latin American Citizens (Lulac) v. Perry*, 548 U.S. 399 (2006) (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993), among others).

23 ¹⁶ Torkelson Aff. ¶¶ 13-16.

24 ¹⁷ Torkelson Aff. ¶ 16.

25 ¹⁸ Torkelson Aff. ¶ 9.

26 ¹⁹ *See Exhibit E* (Trial Ex. 1007).

1 people who are “white with Hispanic heritage” vote the same way as all other
2 minorities, and that white people vote contrary to them all. Since they never offered
3 such proof and their expert disavowed any such contention,²⁰ the claim is ultimately
4 futile, in addition to prejudicial.
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6 **II. APPLICABLE LAW**

7 The decision whether to grant or deny leave to amend under Rule 15 is within
8 the discretion of the trial court.²¹ In exercising this discretion, courts “must apply a
9 balancing test to decide whether the amendment should be granted, weighing the degree
10 of prejudice to the opposing party against the hardship to the movant if the amendment
11 is denied.”²² The court may deny leave to amend if the amendment is “unduly delayed,
12 offered in bad faith, or futile.”²³
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15 **III. THE BASIC PREMISE OF EAST ANCHORAGE PLAINTIFFS’ 16 MOTION IS DEMONSTRABLY FALSE**

17 Once again, without any affidavit or evidence, the East Anchorage Plaintiffs are
18 seeking court relief based solely on accusations by counsel. In this instance, the
19 accusations appear to be knowingly false, in that Ms. Wells herself extracted the data
20 on Exhibit 6004 from the Board’s computer, and so has no reasonable basis to assert
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23 ²⁰ Trial Tr. Jan. 21, 2022, 59:7-23.

24 ²¹ *United States Fire Insurance Co. v. Schnabel*, 504 P.2d 847, 854 (Alaska 1972).

25 ²² *Alderman v. Iditarod Props.*, 32 P.3d 373, 395 (Alaska 2001) (quotation marks
omitted).

26 ²³ *Id.*

1 that the document was provided by the Board. Exhibit 6004 was not created or
2 produced by the Board.²⁴ It was seen for the first time as an attachment to Dr. Hensel's
3 affidavit.²⁵
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5 Ms. Wells went to the Board's office on December 30, 2021 to use the
6 AutoBound Edge software on one of the laptops the Board made available for parties
7 to this litigation.²⁶ She appeared to be examining the Board's Final Proclamation Plan
8 and analyzing the active matrix, which is a spreadsheet that shows data categories.²⁷
9 The data shown in that spreadsheet depends on which active matrix and tab the viewer
10 is looking at.²⁸ All of the underlying population data in the program is from the U.S.
11 Census.²⁹ Deputy Director TJ Presley assisted Ms. Wells with turning on the
12 computer.³⁰ Ms. Wells made all decisions about what to print while using the Board
13 computer.³¹ Mr. Presley shared with Ms. Wells that the Board did not use the racial
14 data that appeared in the active matrix she was examining.³²
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19 ²⁴ Presley Aff. ¶ 8; Singer Aff. ¶ 2.

20 ²⁵ Singer Aff. ¶ 2.

21 ²⁶ Presley Aff. ¶ 3.

22 ²⁷ Presley Aff. ¶ 5-6.

23 ²⁸ Presley Aff. ¶ 5.

24 ²⁹ Presley Aff. ¶ 5, 8.

25 ³⁰ Presley Aff. ¶ 4.

26 ³¹ Presley Aff. ¶ 7.

³² Presley Aff. ¶ 6-7.

1 The supposedly “newly discovered” evidence that concerns the racial breakdown
2 of the South Muldoon area was available to the public since the U.S. Census’ release of
3 the data on August 12, 2021.³³ The specific racial demographics of House District 21
4 was available by November 10, 2021 when the Board finalized House District 21.³⁴
5 The information that Ms. Wells printed and marked as Exhibit 6004 is correct Census
6 data.³⁵ It appears that Ms. Wells printed a page using the AutoBound Edge default
7 configuration, which treats “white” voters as including those with Hispanic heritage.³⁶
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10 To the degree there was any error in the data, it was Ms. Wells’s error in printing
11 default settings and not appreciating the nuance in the census data, or double-checking
12 her data pulled with that of the U.S. Census. After all, Valdez’s expert witness, Kimball
13 Brace, independently produced his own table of census data, marked as Exhibit EE to
14 his affidavit, which matches the Board’s data.³⁷ The Board also offered a data table
15 before trial in Exhibit 1007.
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17 Most egregiously, the East Anchorage Plaintiffs know that the information was
18 publicly available. Their own expert Dr. Hensel’s report is replete with reference to the
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21 ³³ Presley Aff. ¶ 8; THE UNITED STATE CENSUS BUREAU, *2020 Census Timeline of*
22 *Important Milestones*, available at <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html>.

23 ³⁴ See Torkelson Aff. ¶ 18.

24 ³⁵ Presley Aff. ¶ 8.

25 ³⁶ Presley Aff. ¶ 8.

26 ³⁷ Compare Ex. EE to Brace Aff. (**Exhibit D**) with Trial Ex. 1007 (**Exhibit E**); see also Torkelson Aff. ¶ 7.

1 publicly available data.³⁸ Despite this awareness, the East Anchorage Plaintiffs now
2 falsely claim that the result of their counsel’s lack of diligence was actually the
3 malfeasance of the Board and its counsel. Such allegations are made in bad faith and
4 are contrary to the demonstrable facts. East Anchorage Plaintiffs are blaming the Board
5 for their own incompetent understanding of public data. There is no new evidence, only
6 overlooked and underappreciated data.
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8 **IV. NEW ASSERTIONS SIGNIFICANTLY PREJUDICE THE BOARD**
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10 The Board is in the middle of trial. In an unconsolidated case, the East
11 Anchorage Plaintiffs would have rested their case on Friday, January 21, 2022. Five
12 days after concluding their witnesses, the East Anchorage Plaintiffs ask this Court to
13 permit them, while the Board continues defending the remainder of the consolidated
14 cases on unrelated subjects, to amend their application to assert a new race dilution
15 claim under the Equal Protection Clause of the Alaska Constitution. In addition to being
16 highly unusual for a party to seek to add claims after concluding its case, it is extremely
17 prejudicial to the party that is defending such a claim. The fact that the litigation has
18 been accelerated in this consolidated matter does not lessen the prejudice to the Board
19 in defending a new claim, particularly where it is one that is not asserted by any other
20 party, and where nearly by definition the assertion would require an expert witness to
21 defend the claim.
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26 ³⁸ Hensel Aff. nn. 1-2, 7, 10, 18-21, 24-28, p. 20 (Additional Source Index), Ex. I pp.1-2.

1 Claims of racial dilution require statistical racial and voting analyses.³⁹ The
2 Board is not capable of fully performing these computations. No party to this
3 consolidated case asserted racial dilution claims.⁴⁰ Thus, the Board did not retain the
4 expert necessary to defend such a claim.⁴¹ Nor are the Board's direct testimony
5 affidavits focused towards defending or refuting such allegations. In short, permitting
6 the East Anchorage Plaintiffs to spring upon the Board a new claim that requires an
7 expert witness to defend during the middle of trial and after the East Anchorage
8 Plaintiffs have completed testimony of their witnesses imposes a near insurmountable
9 burden on the Board.
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12 Moreover, the East Anchorage Plaintiffs appear to justify their request for this
13 untimely new claim on an allegation that they were not given the correct data.⁴²
14 Counsel for East Anchorage selected from the Board computer the data she desired.⁴³
15 The Board did not omit production; East Anchorage's counsel failed to capture data she
16 apparently desired to capture. Despite her oversight, all the data was available from the
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20 ³⁹ Singer Aff. ¶¶ 4-6.

21 ⁴⁰ Singer Aff. ¶¶ 3-4.

22 ⁴¹ Singer Aff. ¶¶ 3-4.

23 ⁴² East Anchorage Mot. p. 4 (“The data table provided to East Anchorage Plaintiffs from
24 the Board, and relied upon by East Anchorage Plaintiffs’ expert, and the tables contained in
25 Exhibits 1013 and 1014 indicate that a unified Muldoon senate district would have a minority
voting age population of 49.31 percent, just under the threshold for a majority minority
district.”).

26 ⁴³ Presley Aff. ¶ 7.

1 U.S. Census website, and was accessible to her and her clients since August 12. Indeed,
2 the newly offered affidavit of a purported expert shows that the data is available from
3 numerous sources.⁴⁴ Ms. Wells’s data collection error was not an omission by the
4 Board or its counsel, it was an error of her own making.⁴⁵ The prejudice to the Board
5 for Ms. Wells’s error is too great, and the request should be denied on these grounds
6 alone.
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9 **V. THERE IS NO GOOD CAUSE OR EXCUSABLE NEGLIGENCE WHEN**
10 **EAST ANCHORAGE PLAINTIFFS HAD THE INFORMATION ALL**
11 **ALONG**

12 The East Anchorage Plaintiffs’ failure to appreciate the publicly available
13 evidence—the U.S. Census data released to the public on August 12, 2021—does not
14 amount to excusable neglect or good cause.

15 The Fourth Pretrial Order set the deadline to amend pleadings as January 10,
16 2022.⁴⁶ The deadline to disclose expert witnesses was December 29, 2021.⁴⁷ Expert
17 reports were due by January 14, 2022,⁴⁸ and the Board had to raise objections to such
18 reports by January 18, 2022.⁴⁹ Trial started January 21, 2022.⁵⁰

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21 ⁴⁴ See Notice of Filing Unsigned Affidavit of Erin Barker and attached affidavit, ¶¶ 11,
16, 20, 21, 24, 27 (Jan. 25, 2022).

22 ⁴⁵ Presley Aff. ¶¶ 5-8.

23 ⁴⁶ See Fourth Pretrial Order, dated January 4, 2022, p. 2.

24 ⁴⁷ See Third Pretrial Order, dated December 22, 2021, ¶ 3.

25 ⁴⁸ See Fourth Pretrial Order, p. 4.

26 ⁴⁹ Oral order at weekly pretrial hearing.

⁵⁰ Fourth Pretrial Order, p. 2.

1 Because the deadline to amend their pleading passed on January 10, 2022,
2 Alaska Rule of Civil Procedure 6(b) requires the East Anchorage Plaintiffs to
3 demonstrate that their failure to amend to include their racial dilution claim by the
4 January 10 deadline was due to “excusable neglect.”⁵¹ They cannot make this showing.

6 Despite their contention, there is simply no new evidence or discovery. The East
7 Anchorage Plaintiffs’ new racial dilution allegation is based on the U.S. Census data
8 that was released publicly on August 12, 2021, and was made available by the Board in
9 AutoBound Edge consistent with the first Pretrial Order.⁵² There was no delay in
10 discovery or other newly produced evidence, and emails discussing verifying work and
11 making sure the Board and its consultants had accurate data do not infer a
12 discriminatory motive. The alleged “new evidence” was identified through the figures
13 in Executive Director Torkelson’s Supplemental Affidavit based upon the U.S. Census
14 data used by Dr. Hensel.⁵³ The East Anchorage Plaintiffs had access to the underlying
15 data the entire time; they simply did not appreciate it.⁵⁴ To allege the claim they now
16 seek to assert, after completing presentation of their witnesses at trial, all East
17 Anchorage had to do was marry the U.S. Census data from August 12, 2021 to House
18 District 21 from November 10, 2021. Nothing more was required.
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23 ⁵¹ Alaska R. Civ. P. 6(b).

24 ⁵² Presley Aff. ¶¶ 3, 8.

25 ⁵³ See Torkelson Aff. ¶¶ 10, 18.

26 ⁵⁴ Presley Aff. ¶¶ 6-8.

1 It is widely recognized that a party’s lack of diligence, such as in reviewing and
2 analyzing the available evidence, does not amount to excusable neglect.⁵⁵ This instance
3 is no different. A party cannot ignore the evidence before it and then demand that
4 fairness requires they be permitted to assert complicated racial dilution claims without
5 permitting the other side to retain an expert and prepare a defense. This may be neglect,
6 but it is not excusable, and is certainly prejudicial to the Board and its members.
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9 **VI. A RACIAL DILUTION CLAIM IS FUTILE**

10 Permitting amendment is futile because the East Anchorage Plaintiffs’ own
11 expert has already rebutted and denied the essential elements of their untimely race
12 dilution claim. Further, *Hickel* makes clear that discrimination claims under Alaska’s
13 Equal Protection clause require a showing of intentional conduct.⁵⁶ There has not been
14 a single piece of evidence or testimony to support that the Board acted intentionally to
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18 ⁵⁵ *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000) (Sotomayor, J.)
19 (“We now join these courts in holding that despite the lenient standard of Rule 15(a), a district
20 court does not abuse its discretion in denying leave to amend the pleadings after the deadline
21 set in the scheduling order where the moving party has failed to establish good cause.
22 Moreover, we agree with these courts that a finding of ‘good cause’ depends on the diligence
23 of the moving party.”); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir.
24 1992) (affirming trial court’s refusal to allow amendment after deadline in scheduling order
25 for amendment passed); *Erica G. v. Taylor Taxi, Inc.*, 357 P.3d 783, 787-88 (Alaska 2015)
(holding no abuse of discretion where attorneys provided a long and shifting catalog of
circumstances to justify their failure to meet the deadline, but all explanations lacked a nexus
to the late filing); *Scott v. Cleveland*, 360 Mich. 322, 334 (Mich. 1960) (finding abuse of
discretion where trial court permitted amendment of new claim on first day of trial that left the
defendants without an opportunity to prepare a defense to the new claims).

26 ⁵⁶ *Hickel v. Southeast Conference*, 846 P.2d 38, 49 (Alaska 1992).

1 discriminate against any minority group. Nor have the East Anchorage Plaintiffs
2 identified any such evidence in their motion.

3
4 Dr. Hensel’s testimony dooms the East Anchorage Plaintiffs’ race dilution claim.
5 Under the federal guidance for evaluating racial dilution claims alleged for mixed
6 minority groups, the law is clear that the moving party must demonstrate, as a
7 preliminary matter, that:

8
9 (1) the minority group is sufficiently large and geographically compact to
10 constitute a majority;

11 (2) the minority group must be politically cohesive; and

12 (3) the white majority voters sufficiently vote a bloc to defeat the minority’s
13 preferred candidate.⁵⁷

14 The United States Supreme Court has also cautioned that “a State may not ‘assum[e]
15 from a group of voters’ race that they “think alike, share the same political interests,
16 and will prefer the same candidates at the polls.””⁵⁸ Yet, that is exactly what the East
17 Anchorage Plaintiffs are asking this Court to do because they have presented zero
18 evidence to support common voting amongst South Muldoon voters. Their expert
19 actually testified to the opposite, as will be discussed below.
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21 Turning back to the first element required under federal precedent, the evidence
22 in the case presently demonstrates that the minority groups in the challenged East
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25 ⁵⁷ See *id.* at 50-51.

26 ⁵⁸ *Lulac*, 548 U.S. at 433 (quoting *Shaw*, 509 U.S. at 647, among others).

1 Anchorage districts are not a majority—43.65% or 42.14% depending on how Hispanic
2 heritage is categorized.⁵⁹ Thus, element one is contrary to the current evidence in the
3 record. More significantly, Dr. Hensel testified that the minority groups of East
4 Anchorage did not vote cohesively.⁶⁰ Specifically he testified, that he was not willing
5 to make the assumption that the South Muldoon minority voters voted cohesively or
6 differently than white voters in the area.⁶¹ He went on to describe the minority voters’
7 district as a “swing district,” and clarified that it had voted Republican more often than
8 Democrat.⁶² The district that the East Anchorage Plaintiffs allege will dilute the South
9 Muldoon vote also tends to vote Republican.⁶³ The evidence in the case, including East
10 Anchorage’s expert testimony, disproves the second necessary element of their racial
11 dilution claim. Finally, the white voters and the minority voters have often voted
12 together, thus the third element is not met either because there is often consensus
13 between the South Muldoon minorities and the Eagle River white voters on the
14 preferred candidate.⁶⁴ East Anchorage’s racial dilution claim is futile, in addition to
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20 ⁵⁹ Torkelson Aff. ¶ 11 (“Regardless of whether ‘white with Hispanic heritage’ is
21 categorized as ‘white’ or ‘minority,’ South Muldoon’s House District 21 remains a
22 majority white district at 42.14% (default) and 43.65% (inclusive) minority.”).

23 ⁶⁰ Trial Tr. Jan. 21, 2022, at 59:7-60:17.

24 ⁶¹ Trial Tr. Jan. 21, 2022, at 59:7-60:17.

25 ⁶² Trial Tr. Jan. 21, 2022, at 86:16-87:1, 87:12-90:23.

26 ⁶³ Trial Tr. Jan. 21, 2022, at 89:9-18.

⁶⁴ Trial Tr. Jan. 21, 2022, at 59:7-60:17, 89:8-90:23.

1 extremely prejudicial and untimely. For all the forgoing reasons, the Court should deny
2 the motion.

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4 In the event that, despite the numerous oppositions raised above, the Court is
5 inclined to grant the East Anchorage Plaintiffs' request, the Board requests a
6 continuance of trial for at least one month to permit it to retain and educate the necessary
7 expert and supplement its direct testimony. The East Anchorage Plaintiffs had the
8 information available to them the entire time. Simply because their counsel, with the
9 benefit of hindsight, wish they had advanced a different case, the Board should not be
10 subjected to such undue and unprecedented prejudice.

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12 Finally, for the reasons stated herein, the Board similarly opposes the East
13 Anchorage Plaintiffs' untimely motion to admit the purported expert testimony of Erin
14 Barker.

15
16 DATED at Anchorage, Alaska, this 27th day of January, 2022.

17
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27th day of January, 2022,
3 a true and correct copy of the ALASKA REDISTRICTING
4 BOARD'S OPPOSITION TO EAST ANCHORAGE PLAINTIFFS'
5 MOTION TO AMEND APPLICATION TO ASSERT ADDITIONAL
6 CLAIMS AND OPPOSITION TO MOTION TO ADMIT EXPERT
7 AFFIDAVIT (17 pages) was served upon the following by:

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Jeanine M. Huston
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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4 In the Matter of the)
5 2021 Redistricting Plan.)
6)
7 _____) Case No. 3AN-21-08869CI

8 **AFFIDAVIT OF PETER TORKELOSON**

9 STATE OF ALASKA)
10) ss.
11 THIRD JUDICIAL DISTRICT)

12 I, Peter Torkelson, being first duly sworn, depose and state as follows:

13 1. My name is Peter Torkelson, and I am the age of majority. The following
14 testimony is based on my personal knowledge.

15 2. I am the Executive Director of the Alaska Redistricting Board.

16 3. On August 5, 2021, the U.S. Census issued a statement via Twitter that
17 they were moving up the “legacy formatted” data delivery date from August 16 to
18 August 12.

19 4. The census data supports determining “minority” percentages for any
20 piece of geography – including a new election district – in more than one way
21 depending on whether you consider someone who identifies as “white with Hispanic
22 heritage” to be “white” or a member of a “minority.”

23 5. The default active matrix configuration in AutoBound Edge counts
24 anyone who checks “white” or “white with Hispanic heritage” as being white, and
25
26

1 therefore not a “minority” member for purposes of computing total “minority”
2 percentage. For purposes of brevity, I may refer in my following paragraphs to this
3 formula as “default.”
4

5 6. Following the advice of the Alaska Department of Labor, I employed a
6 more inclusive calculation when considering Anchorage districts. This methodology
7 includes “white with Hispanic heritage” in the “minority” calculation column. The
8 “minority” percentage difference between “white alone” or “white with Hispanic
9 heritage” for the Board’s adopted plan is generally 1-2%, depending on the Hispanic
10 heritage density in the district. For brevity, I may refer to this calculation of “minority”
11 as “inclusive.”
12

13 7. I observed that Plaintiff’s expert witness Kimball Brace employed the
14 same “inclusive” calculation for total minority population in his Affidavit Exhibit EE,
15 page 1, far right column. For example, Mr. Brace used the Board’s Final Proclamation
16 Anchorage districts, and so his minority percentages for his Valdez Alternative 3
17 districts 9-24 match the Board’s Anchorage minority calculations for those districts.
18 These figures appear in the illustrations following paragraph 17.
19
20

21 8. For example, reflecting the greater number of Hispanic heritage military
22 members, House District 23, which contains JBER, is 42.24% minority without
23 Hispanic heritage, and 46.63% percentage if white with Hispanic heritage is included,
24 a difference of 4.39%.
25
26

1 9. By contrast, neighboring District 18 (Mountain View), the most racially
2 diverse House district in Alaska, features minority percentages of 64.03% (default), and
3 66.01% (inclusive), a difference of 1.98%. House District 19 (Russian Jack/UMed) has
4 a minority population of 48.06% (default) or 49.82% (inclusive), a difference of 1.76%.

5
6 10. In reviewing Dr. Chase Hensel’s expert affidavit, I noted that he
7 employed the default AutoBound definition, so crafted my supplemental response to
8 use his methodology, this avoided comparing oranges to apples.

9
10 11. Regardless of whether “white with Hispanic heritage” is categorized as
11 “white” or “minority,” South Muldoon’s House District 21 remains a majority white
12 district at 42.14% (default) or 43.65% (inclusive) minority.

13
14 12. As noted in my initial affidavit at paragraph 73, Senate District K with
15 South Muldoon and South Eagle River has a minority population of 33.67% using the
16 “inclusive” calculation. This percentage would be 31.9% if measured using the
17 AutoBound default.

18
19 13. Senate District J, which pairs House District 19 (Russian Jack/UMed)
20 with House District 20 (North Muldoon), has a minority population of 52.31% (default)
21 or 54.25% (inclusive).

22 14. Senate District I, which pairs House District 18 (Mountain View) with
23 House District 17 (Downtown) has a minority population of 52.52% (default) or
24 54.33% (inclusive).

1 15. Regardless of the calculation used, the Board’s Final Plan Senate pairings
2 results in two evenly balanced majority-minority Senate districts.

3
4 16. Using either minority calculation, the Board’s adopted House plan
5 contains two House districts with greater than 50% “minority” population. These are
6 House District 18 (64.03% or 66.01%) and House District 20 (56.84% or 58.97%).
7 Since there are only two House districts over 50%, it is not possible to create more than
8 two majority-minority Senate districts in Anchorage.

9
10 17. I have not found any disparity between the Census population counts the
11 Board used and those advanced by Plaintiffs. Instead the various data differences
12 outlined in Erin Barker’s affidavit reflect the results of using the “inclusive” versus
13 default “minority” population formulas. The following illustrations detail how these
14 percentages are calculated and the source data used by the Board:
15

Total Minority vs Total Non-White Calculations

$\frac{\text{Total Voting Age Population} - \text{Voting Age White}}{\text{Total Voting Age Population}} \rightarrow \text{Total Minority Percentage}$



DISTRICT	VA Persons	VA White	VA Black	VA Hispanic	VA Non Hisp	VA Non Hisp Whi	VA Asian	VA Non Hisp Other	VA Minority	VA one Race
21	14,029	8,117	1,016	924	13,105	7,905	1,194	135	5,912	12,368
22	13,241	10,453	309	843	12,398	10,183	368	188	2,788	11,939
23	14,130	8,161	1,358	1,823	12,307	7,541	799	73	5,969	12,771
24	13,509	10,563	258	787	12,722	10,322	347	222	2,946	12,082
25	13,846	11,215	154	576	13,270	11,008	212	150	2,631	12,678
26	12,876	10,252	161	555	12,321	10,045	217	150	2,624	11,626
27	13,567	10,696	179	586	12,981	10,491	254	134	2,871	12,311
28	13,583	10,871	143	634	12,949	10,657	222	140	2,712	12,169
29	13,587	11,005	100	500	12,887	10,800	220	100	2,480	12,440



$\frac{\text{Total Voting Age Pop.} - \text{Non-Hispanic White}}{\text{Total Voting Age Population}} \rightarrow \text{Total Non-White VAP}$

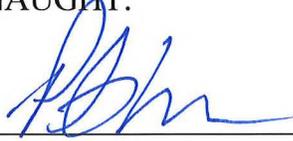
1. Two formulas for computing "minority" populations from Census data.

DISTRICT	Total Population	Total VAP	VA White	VA Non-Hisp White	Autobound Minority (default)	Non-White VAP (inclusive)	Difference		
1	17,921	13,930	8,432	8,299	39.47%	40.42%	0.95%		
2	18,048	14,188	8,806	8,672	37.93%	38.88%	0.94%		
3	18,195	14,154	10,408	10,260	26.47%	27.51%	1.05%		
4	18,122	14,513	9,081	8,900	37.43%	38.68%	1.25%		
5	18,707	14,467	8,262	8,048	42.89%	44.37%	1.48%		
6	18,434	14,788	12,632	12,476	14.58%	15.63%	1.05%		
7	18,465	13,816	10,881	10,685	21.24%	22.66%	1.42%		
8	18,471	14,564	12,046	11,896	17.29%	18.32%	1.03%		
9	18,284	13,957	11,452	11,270	17.95%	19.25%	1.30%		
10	18,523	13,986	8,505	8,249	39.19%	41.02%	1.83%		
11	18,103	13,701	9,306	9,079	32.08%	33.73%	1.66%		
12	18,217	13,822	7,658	7,436	44.60%	46.20%	1.61%		
13	18,185	14,342	7,875	7,605	45.09%	46.97%	1.88%		
14	18,213	14,827	8,127	7,892	45.19%	46.77%	1.58%		
15	18,168	13,704	8,804	8,597	35.76%	37.27%	1.51%		
16	18,182	14,269	9,248	9,038	35.19%	36.66%	1.47%		
17	18,203	14,949	8,602	8,356	42.46%	44.10%	1.65%		
18	18,243	13,076	4,704	4,444	64.03%	66.01%	1.99%		
19	18,239	14,234	7,393	7,143	48.06%	49.82%	1.76%		
20	18,285	13,349	5,761	5,477	56.84%	58.97%	2.13%		
21	18,414	14,029	8,117	7,905	42.14%	43.65%	1.51%		
22	18,205	13,241	10,453	10,183	21.06%	23.09%	2.04%		
23	18,023	14,130	8,161	7,541	42.24%	46.63%	4.39%		
24	18,032	13,509	10,563	10,322	21.81%	23.59%	1.78%		
25	18,822	13,846	11,215	11,008	19.00%	20.50%	1.50%		
26	18,807	12,876	10,252	10,045	20.38%	21.99%	1.61%		
27	18,799	13,567	10,696	10,491	21.16%	22.67%	1.51%		
28	18,793	13,583	10,871	10,657	19.97%	21.54%	1.58%		
29	18,773	13,587	11,095	10,899	18.34%	19.78%	1.44%		
30	18,536	14,803	11,830	11,696	20.08%	20.99%	0.91%		
31	18,294	14,336	8,148	7,863	43.16%	45.15%	1.99%		
32	18,522	13,792	9,375	8,462	32.03%	38.65%	6.62%		
33	18,500	13,457	10,381	10,118	22.86%	24.81%	1.95%		
34	18,382	13,963	11,153	10,878	20.12%	22.09%	1.97%		
35	18,367	14,343	10,632	10,407	25.87%	27.44%	1.57%		
36	18,558	14,199	8,839	8,731	37.75%	38.51%	0.76%		
37	18,226	14,299	3,693	3,557	74.17%	75.12%	0.95%		
38	17,853	11,522	1,256	1,230	89.10%	89.32%	0.23%		
39	17,453	11,120	1,358	1,334	87.79%	88.00%	0.22%		
40	18,824	13,165	3,555	3,431	73.00%	73.94%	0.94%		
Census Data					Computed Data			Average	1.62%

2. Table of populations, voting age population and minority percentages calculations using default and inclusive formula detailed above.

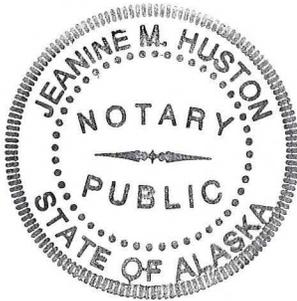
1 18. All the source population data in the numerical columns of the above table
2 are provided by the U.S. Census Bureau and available for free download.¹ By
3 November 10, 2021, anyone could calculate the specific racial makeup of the house
4 districts and senate districts in the Board's Final Plan by downloading the shape file
5 from the Board's website that Board staff posted on November 9, 2021² and overlaying
6 it on U.S. Census data in an appropriate computer application.
7

8 FURTHER AFFIANT SAYETH NAUGHT.
9

10 

11 _____
Peter Torkelson

12 SUBSCRIBED AND SWORN to before me this 27th day of January, 2022, at
13 Anchorage, Alaska.
14



16 

17 _____
Notary Public in and for the State of Alaska
18 My Commission expires: 1.31.2024
19
20
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23

24 ¹ [https://www2.census.gov/programs-surveys/decennial/2020/data/01-Redistricting_File--
25 PL_94-171/Alaska/](https://www2.census.gov/programs-surveys/decennial/2020/data/01-Redistricting_File--PL_94-171/Alaska/).

26 ² [https://www.akredistrict.org/files/2516/3651/2837/Final-Adopted-Shapefile-11-9-
21.zip](https://www.akredistrict.org/files/2516/3651/2837/Final-Adopted-Shapefile-11-9-21.zip)

1 CERTIFICATE OF SERVICE

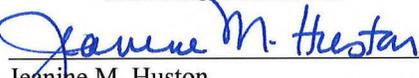
2 I hereby certify that on the 27th day of January, 2022, a true and
3 correct copy of the AFFIDAVIT OF PETER TORKELESON (8 pages)
4 was served upon the following by:

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1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4)
5 In the Matter of the)
6 2021 Redistricting Plan.)
7)

8) Case No. 3AN-21-08869CI

9 **AFFIDAVIT OF TJ PRESLEY**

10 STATE OF ALASKA)
11) ss.
12 THIRD JUDICIAL DISTRICT)

13 I, TJ Presley, being first duly sworn, depose and state as follows:

14 1. My name is TJ Presley, and I am the age of majority. The following
15 testimony is based on my personal knowledge.

16 2. I am the Deputy Director of the Alaska Redistricting Board.

17 3. On December 30, 2021, Holly Wells, counsel for the East Anchorage
18 Plaintiffs, came to the Board's office to use the autoBound EDGE software on one of
19 the laptops we had made available for the parties to this litigation.

20 4. I assisted Ms. Wells by turning on the computer. All of the laptops were
21 loaded with the autoBound EDGE "basic" active matrix designed by staff, in order to
22 reflect the process used by the Board.

23 5. Ms. Wells appeared to be examining the Board's Final Proclamation Plan
24 and analyzing the active matrix, which is a spreadsheet that shows data categories. The
25 data shown in that spreadsheet depends on which active matrix and tab the user is
26

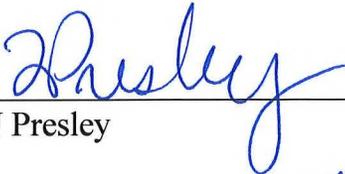
1 looking at. All of the underlying population data in the program is from the U.S. Census
2 results.

3
4 6. Ms. Wells asked why the active matrix was not displaying racial
5 demographic information. I advised Ms. Wells that the Board did not utilize that
6 information. Instead, the Board used a “basic matrix” that only displayed population
7 target, total population, and deviation percentage. Ms. Wells acknowledged she
8 understood that the Board did not utilize that information, but voiced that she wanted
9 that information for her own investigation. In other words, to check the racial
10 breakdown of districts for herself and to inform her case, not to understand the Board’s
11 process.
12

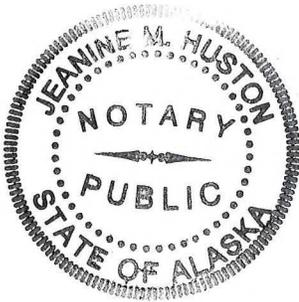
13
14 7. My recollection is that Ms. Wells printed data from the default active
15 matrix that did display racial data. I do not recall if she pushed print or if I pushed print
16 for her, but she made all decisions about what to put on the screen and what to print. I
17 also remember reiterating to her again that the Board and its staff did not use the racial
18 data that appeared in the active matrix she was examining.
19

20 8. The information that Ms. Wells printed and marked as Exhibit 6004 is
21 data from the 2020 U.S. Census, as reported by autoBound EDGE according to its
22 default active matrix settings. I did not create Exhibit 6004. It appears Ms. Wells
23 printed a page using the autoBound Edge default configuration. I believe Exhibit 6004
24 to be a printout made by Ms. Wells during her visit to the Board’s office on December
25
26 30, 2021.

1
2 FURTHER AFFIANT SAYETH NAUGHT.

3
4 
5 TJ Presley

6 SUBSCRIBED AND SWORN to before me this 26th day of January, 2022, at
7 Anchorage, Alaska.



10 
11 Notary Public in and for the State of Alaska
12 My Commission expires: 1-31-2024

1 CERTIFICATE OF SERVICE

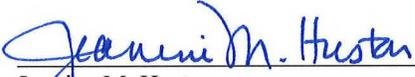
2 I hereby certify that on the 27th day of
3 January, 2022, a true and correct copy of the
4 AFFIDAVIT OF TJ PRESLEY (4 pages) was served upon
5 the following by:

6 US Mail **Email** Fax Hand-Delivery

7 Stacey C. Stone
8 Gregory Stein
9 Holmes Weddle & Barcott, PC
10 Email: sstone@hwb-law.com
11 gstein@hwb-law.com

12 Holly Wells
13 Mara E. Michaletz
14 William D. Falsey
15 Zoe A. Danner
16 Birch Horton Bittner & Cherot
17 Email: hwells@BHB.com
18 mmichaletz@bhb.com
19 wfalsey@bhb.com
20 zdanner@bhb.com

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22 Whitney A. Leonard
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24 Miller & Monkman, LLP
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Thomas Flynn
State of Alaska
Attorney General's Office
Email: thomas.flynn@alaska.gov

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 In the Matter of the)
5 2021 Redistricting Plan.)
6)

7) Case No. 3AN-21-08869CI

8 **AFFIDAVIT OF MATTHEW SINGER**

9 STATE OF ALASKA)
10) ss.
11 THIRD JUDICIAL DISTRICT)

12 I, Matthew Singer, being duly sworn, depose and state as follows:

13 1. I am counsel to the Alaska Redistricting Board (“Board”).

14 2. Exhibit 6004 was not produced by my office despite the assertion in Dr.
15 Hensel’s Affidavit footnote 22 to the contrary. I understand that Ms. Wells went to the
16 Board’s office on December 30, as set out in the Affidavit of Deputy Director TJ
17 Presley. All documents produced by my office have bates stamp numbers on them,
18 beginning with ARB000001. The first time my firm saw that document is when Dr.
19 Hensel produced it with his report.
20

21 3. My client and I made decisions about whether to retain expert witnesses
22 based on the allegations asserted in each of the five legal challenges. We opted not to
23 retain experts because the issues asserted in each complaint involved matters that,
24 pursuant to the state constitution, are left to the discretion of the Board. That is, we did
25 not believe that an expert would help the Court determine if the Board acted rationally or
26

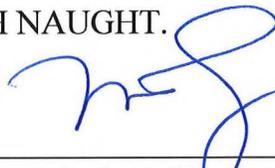
1 if the plan was compact, contiguous, and relatively socio-economically integrated.

2 4. Had any party asserted claims involving race, racial dilution, or the Voting
3 Rights Act, it would have been necessary to retain an expert witness on these subjects.
4

5 5. Bruce Adelson served as a lawyer to the Board and provided me and the
6 Board legal advice about the Voting Rights Act and related redistricting legal concepts
7 involving race. Dr. Katz was retained as a non-testifying expert to prepare a statistical
8 study needed to evaluate compliance with the Voting Rights Act, particularly with regard
9 to traditional Alaska Native-controlled communities in Districts 37-40. Neither Mr.
10 Adelson nor Dr. Katz was retained as a testifying expert, and both are very busy serving
11 various redistricting clients around the nation.
12

13 6. If this Court were to allow an amended claim to insert a racial dilution
14 claim, I would be professionally obligated to retain an expert and obtain an expert opinion
15 to respond to the claim. Securing an expert and obtaining a report will take, at minimum,
16 several weeks. The Board would need a continuance of 30 days to address such a claim.
17

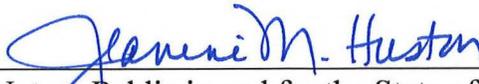
18 FURTHER AFFIANT SAYETH NAUGHT.

19 

20 _____
21 Matthew Singer
22 Alaska Bar No. 9911072

23 SUBSCRIBED AND SWORN to before me this 26th day of January, 2022, at
24 Anchorage, Alaska



25 
26 _____
Notary Public in and for the State of Alaska
My Commission Expires: 1-31-2024

1 CERTIFICATE OF SERVICE

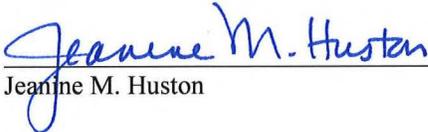
2 I hereby certify that on the 27th day of
3 December, 2021, a true and correct copy of
4 AFFIDAVIT OF MATTHEW SINGER (3 pages)
5 was served upon the following by:

6 US Mail **Email** Fax Hand-Delivery

7 Stacey C. Stone
8 Gregory Stein
9 Holmes Weddle & Barcott, PC
10 Email: ssone@hwb-law.com
11 gstein@hwb-law.com

12 Holly Wells
13 Mara E. Michaletz
14 William D. Falsey
15 Zoe A. Danner
16 Birch Horton Bittner & Cherot
17 Email: hwells@BHB.com
18 mmichaletz@bhb.com
19 wfalsey@bhb.com
20 zdanner@bhb.com

21 Nathaniel Amdur-Clark
22 Whitney A. Leonard
23 Sonosky, Chambers, Sachse,
24 Miller & Monkman, LLP
25 Email: nclark@sonosky.com
26 whitney@sonosky.net


Jeanine M. Huston

Robin O. Brena
Jake W. Staser
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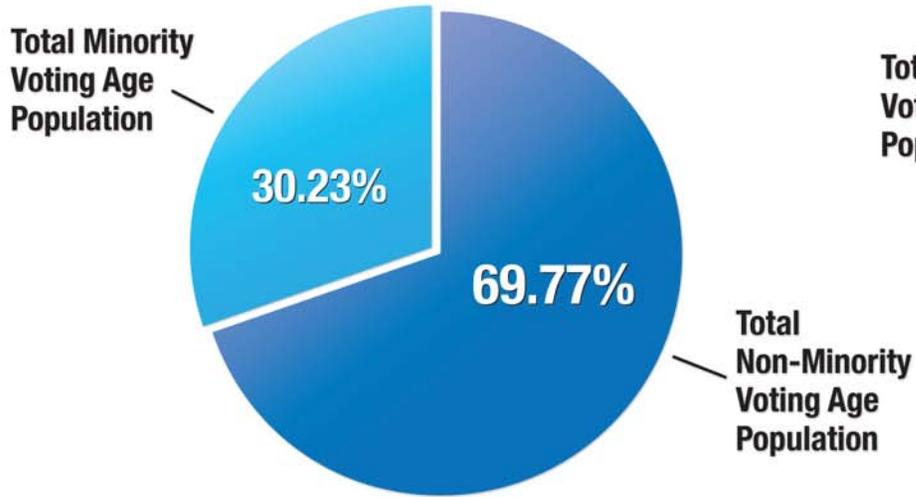
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State of Alaska
Attorney General's Office
Email: thomas.flynn@alaska.gov

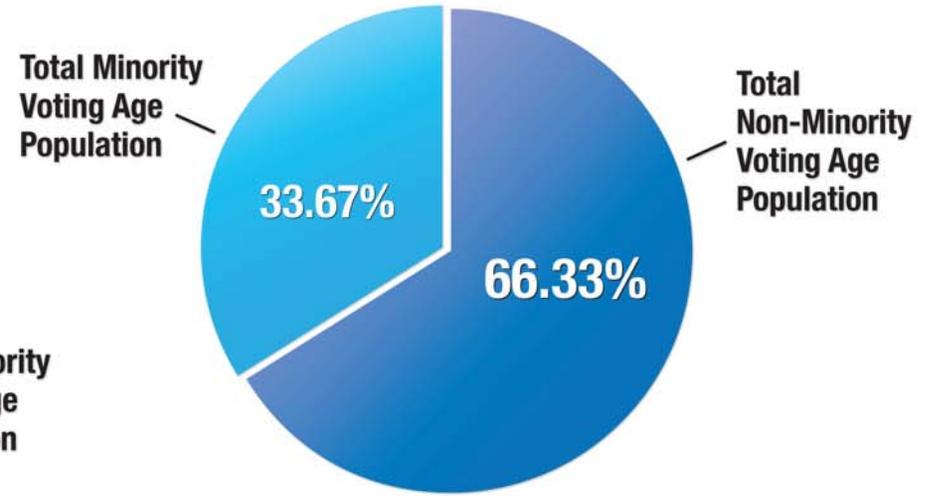
DISTRICT	Total Population				Racial Demographics as Percent of Total Population						Voting Age Population		Racial Demographics as Percent of Voting Population					
	All Persons	Target	Dev.	Difference	NH White	NH Black	NH Native	NH Asian	Hispanic	Minority	Adult	VAP %	NH White	NH Black	NH Native	NH Asian	Hispanic	Minority
1	17,921	18,335	-2.26%	-414	55.61%	0.59%	21.22%	6.38%	4.34%	44.39%	13,930	77.7%	59.58%	0.61%	19.84%	6.62%	3.63%	40.42%
2	18,048	18,335	-1.56%	-287	56.88%	0.58%	20.98%	4.22%	5.01%	43.12%	14,188	78.6%	61.12%	0.65%	19.78%	4.55%	4.14%	38.88%
3	18,291	18,335	-0.24%	-44	62.33%	0.80%	8.70%	6.39%	6.22%	37.67%	14,134	77.3%	66.34%	0.94%	8.36%	6.75%	5.29%	33.66%
4	18,026	18,335	-1.68%	-309	63.64%	1.06%	11.84%	5.38%	5.91%	36.36%	14,533	80.6%	67.32%	1.01%	11.37%	5.49%	5.13%	32.68%
5	18,452	18,335	0.64%	117	53.22%	1.08%	13.99%	15.61%	6.93%	46.78%	14,189	76.9%	56.16%	1.30%	13.25%	15.81%	6.15%	43.84%
6	17,718	18,335	-3.36%	-617	82.82%	0.32%	4.17%	1.00%	3.01%	17.18%	14,231	80.3%	84.53%	0.30%	4.22%	1.08%	2.57%	15.47%
7	17,809	18,335	-2.87%	-526	73.79%	0.59%	7.57%	1.76%	5.24%	26.21%	13,335	74.9%	77.23%	0.63%	7.01%	2.00%	4.21%	22.77%
8	17,708	18,335	-3.42%	-627	79.98%	0.47%	6.07%	1.13%	3.32%	20.02%	13,940	78.7%	81.94%	0.49%	5.97%	1.26%	2.70%	18.06%
9	18,284	18,335	-0.28%	-51	77.66%	1.05%	3.16%	3.53%	5.31%	22.34%	13,957	76.3%	80.75%	1.12%	2.91%	3.68%	4.51%	19.25%
10	18,523	18,335	1.03%	188	54.40%	2.72%	7.17%	11.72%	11.02%	45.60%	13,986	75.5%	58.98%	2.85%	6.59%	11.56%	9.74%	41.02%
11	18,103	18,335	-1.26%	-232	62.66%	2.87%	6.03%	9.03%	7.67%	37.34%	13,701	75.7%	66.27%	2.70%	5.91%	9.30%	6.53%	33.73%
12	18,217	18,335	-0.64%	-118	50.14%	3.41%	8.33%	13.94%	8.94%	49.86%	13,822	75.9%	53.80%	3.60%	8.16%	14.61%	8.21%	46.20%
13	18,185	18,335	-0.82%	-150	48.29%	4.37%	8.48%	12.11%	10.16%	51.71%	14,342	78.9%	53.03%	4.41%	8.31%	12.32%	8.82%	46.97%
14	18,213	18,335	-0.66%	-122	49.11%	4.77%	10.33%	11.10%	8.98%	50.89%	14,827	81.4%	53.23%	5.00%	10.18%	11.26%	7.86%	46.77%
15	18,168	18,335	-0.91%	-167	58.50%	2.38%	6.70%	11.34%	6.49%	41.50%	13,704	75.4%	62.73%	2.47%	6.21%	11.84%	5.49%	37.27%
16	18,182	18,335	-0.83%	-153	59.28%	2.36%	7.18%	9.91%	7.14%	40.72%	14,269	78.5%	63.34%	2.40%	6.83%	10.23%	6.34%	36.66%
17	18,203	18,335	-0.72%	-132	51.26%	7.39%	8.40%	7.11%	9.20%	48.74%	14,949	82.1%	55.90%	6.93%	8.29%	7.30%	7.97%	44.10%
18	18,243	18,335	-0.50%	-92	28.27%	8.90%	11.38%	15.06%	13.57%	71.73%	13,076	71.7%	33.99%	9.22%	12.21%	14.03%	12.24%	66.01%
19	18,239	18,335	-0.52%	-96	45.24%	6.32%	11.09%	11.67%	9.39%	54.76%	14,234	78.0%	50.18%	6.53%	10.53%	11.57%	8.28%	49.82%
20	18,285	18,335	-0.27%	-50	35.42%	9.51%	10.35%	14.11%	10.62%	64.58%	13,349	73.0%	41.03%	10.06%	9.87%	12.68%	9.94%	58.97%
21	18,414	18,335	0.43%	79	50.83%	6.89%	8.36%	8.91%	7.94%	49.17%	14,029	76.2%	56.35%	7.02%	8.12%	8.41%	6.59%	43.65%
22	18,205	18,335	-0.71%	-130	73.63%	2.09%	3.60%	2.32%	7.81%	26.37%	13,241	72.7%	76.91%	2.25%	3.43%	2.68%	6.37%	23.09%
23	18,023	18,335	-1.70%	-312	51.89%	8.96%	8.84%	5.45%	14.08%	48.11%	14,130	78.4%	53.37%	9.13%	10.09%	5.56%	12.90%	46.63%
24	18,032	18,335	-1.65%	-303	72.99%	1.64%	3.99%	2.54%	6.85%	27.01%	13,509	74.9%	76.41%	1.84%	3.86%	2.55%	5.83%	23.59%
25	18,235	18,335	-0.54%	-100	74.77%	1.31%	6.11%	1.51%	5.64%	25.23%	13,031	71.5%	78.10%	1.43%	5.72%	1.65%	4.74%	21.90%
26	18,398	18,335	0.34%	63	73.92%	1.08%	6.25%	1.55%	5.33%	26.08%	12,561	68.3%	77.80%	1.23%	5.86%	1.79%	4.24%	22.20%
27	18,055	18,335	-1.53%	-280	73.16%	1.24%	6.30%	1.74%	5.63%	26.84%	13,099	72.6%	77.40%	1.26%	6.03%	1.76%	4.34%	22.60%
28	18,173	18,335	-0.88%	-162	75.99%	0.75%	5.04%	1.37%	5.62%	24.01%	13,180	72.5%	78.35%	0.89%	4.77%	1.49%	4.66%	21.65%
29	18,222	18,335	-0.62%	-113	80.23%	0.41%	4.76%	1.05%	3.48%	19.77%	13,327	73.1%	82.84%	0.47%	4.46%	1.28%	2.77%	17.16%
30	18,228	18,335	-0.58%	-107	76.57%	1.10%	8.77%	1.16%	3.28%	23.43%	14,648	80.4%	78.28%	1.20%	9.34%	1.26%	2.67%	21.72%
31	18,916	18,335	3.17%	581	51.23%	6.74%	14.44%	4.97%	8.74%	48.77%	14,790	78.2%	55.03%	6.99%	13.92%	5.39%	7.71%	44.97%
32	18,968	18,335	3.45%	633	59.70%	7.09%	5.59%	3.89%	12.45%	40.30%	14,081	74.2%	62.15%	7.40%	5.00%	4.25%	11.93%	37.85%
33	18,965	18,335	3.44%	630	72.67%	2.17%	5.25%	2.17%	6.00%	27.33%	13,797	72.7%	75.52%	2.25%	4.57%	2.59%	5.39%	24.48%
34	18,558	18,335	1.22%	223	71.96%	0.70%	12.61%	1.35%	3.74%	28.04%	14,467	78.0%	75.07%	0.74%	11.47%	1.39%	2.98%	24.93%
35	18,956	18,335	3.39%	621	69.17%	2.25%	9.22%	3.03%	5.23%	30.83%	14,774	77.9%	72.26%	2.34%	8.48%	3.42%	4.68%	27.74%
36	18,760	18,335	2.32%	425	70.70%	1.80%	8.07%	3.70%	7.13%	29.30%	14,231	75.9%	73.02%	2.01%	7.79%	3.98%	6.24%	26.98%
37	19,039	18,335	3.84%	704	20.60%	3.07%	46.71%	12.30%	8.53%	79.40%	14,800	77.7%	24.08%	3.92%	40.68%	14.72%	9.49%	75.92%
38	18,691	18,335	1.94%	356	7.84%	0.45%	85.13%	1.11%	0.93%	92.16%	11,888	63.6%	10.44%	0.66%	82.26%	1.56%	1.03%	89.56%
39	18,911	18,335	3.14%	576	11.05%	0.36%	80.28%	0.66%	1.36%	88.95%	12,559	66.4%	14.35%	0.46%	77.28%	0.80%	1.26%	85.65%
40	18,824	18,335	2.67%	489	19.38%	1.22%	64.45%	3.66%	3.45%	80.62%	13,165	69.9%	26.06%	1.65%	57.71%	4.12%	4.15%	73.94%
STATE TOT	733,391																	
Total Dev			7.3%	1,331														
Highest			3.8%	704														
Lowest			-3.4%	(627)														

District	Total Population	Voting Age Population	Non-white VAP	Non-white VAP
9	18,284	13,957	2,687	19.25%
10	18,523	13,986	5,737	41.02%
11	18,103	13,701	4,622	33.73%
12	18,217	13,822	6,386	46.20%
13	18,185	14,342	6,737	46.97%
14	18,213	14,827	6,935	46.77%
15	18,168	13,704	5,107	37.27%
16	18,182	14,269	5,231	36.66%
17	18,203	14,949	6,593	44.10%
18	18,243	13,076	8,632	66.01%
19	18,239	14,234	7,091	49.82%
20	18,285	13,349	7,872	58.97%
21	18,414	14,029	6,124	43.65%
22	18,205	13,241	3,058	23.09%
23	18,023	14,130	6,589	46.63%
24	18,032	13,509	3,187	23.59%

2013 Senate District N
South Muldoon (D27) & South Anchorage (D28)



2021 Senate District K
South Muldoon (D21) & Eagle River (D22)



1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3
4 IN THE MATTER OF THE

5 2021 REDISTRICTING PLAN.

6 _____/
 Case No. 3AN-21-08869 CI
 (Consolidated)

**CERTIFIED
TRANSCRIPT**

7

8

9

10

11

VOLUME I

12

TRANSCRIPT OF NON-JURY TRIAL

13

BEFORE THE HONORABLE THOMAS A. MATTHEWS
Superior Court Judge

14

15

Pages 1 through 163

16

Anchorage, Alaska

17

January 21, 2022

9:00 a.m.

18

19

20

21

22

23

24

25

IN THE MATTER OF THE 2021 REDISTRICTING PLAN
NON-JURY TRIAL VOL. I on 01/21/2022

Page 2	Page 4
1 APPEARANCES:	1 TABLE OF CONTENTS
2	2
3 FOR PLAINTIFFS, CITY OF VALDEZ, MARK DETTER, MUNICIPALITY OF SKAGWAY, AND BRAD RYAN:	3 WITNESSES: FOR THE PLAINTIFF:
4 Robin O. Brena, Esq. Jake W. Staser, Esq. Jon "Jack" S. Wakeland, Esq.	4 DAVID DUNSMORE
5 BRENA, BELL & WALKER, P.C. 810 N Street, Suite 100	5 Examination by Mr. Singer 28
6 Anchorage, Alaska 99501 907/258-2000	6
7	7 FELISA WILSON
8	7 Examination by Mr. Singer 30
9 FOR PLAINTIFFS, CALISTA CORPORATION, WILLIAM NANENG, AND HARLEY SUNDOWN:	8 Examination by Mr. Brena 32
10 Eva R. Gardner, Esq. Michael S. Schechter, Esq.	8 Examination by Ms. Wells 34
11 Benjamin J. Farkash, Esq. ASHBURN & MASON, P.C.	9
12 1227 West 9th Avenue, Suite 200 Anchorage, Alaska 99501	10 CHASE HENSEL, PH.D.
13 907/276-4331	10 Examination by Mr. Singer 39
14	11 Examination by Ms. Stone 94
15 FOR PLAINTIFFS, FELISA WILSON, GEORGE MARTINEZ, AND YARROW SILVERS:	11 Examination by Ms. Wells 95
16 Holly C. Wells, Esq. Mara E. Michaletz, Esq.	12 EXHIBITS: FOR THE PLAINTIFF:
17 Zoe Danner, Esq. BIRCH HORTON BITTNER & CHEROT	13 6004 (Unidentified) 127
18 510 L Street, Suite 700 Anchorage, Alaska 99501	14 6005 (Unidentified) 127
19 907/802-2998	15 6008 (Unidentified) 127
20	16 6009 (Unidentified) 127
21 FOR PLAINTIFFS, MATANUSKA-SUSITNA BOROUGH AND MICHAEL BROWN:	17 6014 (Unidentified) 127
22 Stacey C. Stone, Esq. Gregory Stein, Esq.	18 6020 (Unidentified) 127
23 HOLMES WEDDLE & BARCOTT, P.C. 701 West 8th Avenue, Suite 700	19 6030 (Unidentified) 127
24 Anchorage, Alaska 99501	20 6035 (Unidentified) 127
25 907/274-0666	21 FOR THE DEFENDANT:
	22 1000 (Unidentified) 126
	23 1001 (Unidentified) 126
	24 1011 (Unidentified) 126
	25
Page 3	Page 5
1 APPEARANCES/Continued:	1 PROCEEDINGS
2	2 -oOo-
3 FOR DEFENDANT, ALASKA REDISTRICTING BOARD:	3 9:06 AM
4 Matt Singer, Esq. Lee Baxter, Esq. Kayla Tanner, Esq.	4 THE COURT: All right. Good morning,
5 SCHWABE, WILLIAMSON & WYATT	5 everybody. We are on record in the matter of the
6 420 L Street, Suite 400	6 2021 redistricting litigation, Case No. 3AN-21-08869
7 Anchorage, Alaska 99501	7 Civil.
8 907/339-7125	8 We have lots of parties on Zoom here this
9 FOR INTERVENORS DOYON, LIMITED; TANANA CHIEFS	9 morning. I'm not going to go through everybody. We
10 CONFERENCE; FAIRBANKS NATIVE ASSOCIATION; SEALASKA;	10 have all counsel present along with some of their
11 DONALD CHARLIE, JR.; RHONDA PITKA; CHERISE BEATUS;	11 clients.
12 GORDON CARLSON; AND AHTNA, INC.:	12 A couple of statements from a preliminary
13 Nathaniel Amdur-Clark, Esq.	13 standpoint. First, to our members of the public and
14 Whitney Leonard, Esq.	14 media who are watching this on live-stream, welcome.
15 SONOSKY, CHAMBERS, SACHSE,	15 I want to explain just briefly how this trial is
16 MILLER & MONKMAN, LLP	16 going to proceed because we're doing this in a hybrid
17 725 East Fireweed Lane, Suite 420	17 manner.
18 Anchorage, Alaska 99503	18 Instead of the normal presentation of
19 907/258-6377	19 evidence where each side presents direct testimony
20	20 from a witness, then they're cross-examined, and then
21	21 redirect, and so forth, in the interest of moving
22	22 this case along expeditiously because of the very
23	23 constrained time frame that we're operating under,
24	24 we've had all parties pre-file the direct testimony.
25	25 So what we're going to do is start with cross-exam of

Page 58

1 MR. SINGER: Ms. Evans, you can take this
2 down now. Thank you.
3 BY MR. SINGER:
4 Q You understand in redistricting generally
5 that decisions -- one decision has a cascading effect
6 on other -- on other places in other districts?
7 You're familiar with that, right?
8 **A Certainly, uh-huh.**
9 Q And so, for example, you've suggested that
10 North Muldoon should have been paired in a Senate
11 district with South Muldoon --
12 **A Correct.**
13 Q -- right? Now, North Muldoon is a majority
14 minority district; isn't that right?
15 **A Yes.**
16 Q It has 56.84 percent minority voters in
17 North Muldoon?
18 **A Uh-huh.**
19 Q Is that right?
20 **A I'm looking at the -- I'm looking at my**
21 **chart on page 13 and I've got overall population**
22 **62 percent minority versus 38 percent white. Did you**
23 **say 66 or 56?**
24 Q The minority voting age population for the
25 district is 56.84, according to the exhibit that you

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1 attached to your affidavit, Exhibit 3.
2 **A Okay.**
3 **According to the board's data.**
4 Q According to the board's data that you
5 attached to your affidavit, that's right.
6 **A Okay.**
7 Q So that's if we take -- if we assume that
8 minority voters in East Anchorage vote differently
9 than white voters -- let's assume that, okay, for
10 purposes of our discussion. Okay?
11 **A I'm not willing to assume that.**
12 Q Okay. So that's not -- that's not your --
13 that's not embedded in your opinions, that minority
14 voters and white voters have different preferences?
15 **A Instead I would say that being poor and**
16 **urban in South Anchorage may -- that there may be**
17 **white voters who vote with minority voters in --**
18 **because of their commonality, their -- because they**
19 **form a community of interest. So if we look at the**
20 **voting data, we see that South Muldoon tends to be a**
21 **swing district, which perhaps indicates that they are**
22 **deciding things on a more place-by-place basis and**
23 **not necessarily voting as a block.**
24 Q Okay. So it's not your proposition that
25 minorities vote as a block? You -- you're saying

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1 that minorities do not vote as a block in South
2 Muldoon? Is that what I'm hearing you say?
3 **A No. Actually, let me explain that again**
4 **then. What I'm saying is that being minority is only**
5 **one of the variety of things which form a community**
6 **of interest. That it's also having a common -- so**
7 **having a common experience of being a minority in**
8 **majority culture is one thing, but also minority**
9 **groups might tend to be poorer, less educated, to**
10 **have different concerns than -- so that they have**
11 **concerns that they're going to share with other poor**
12 **people in the district regardless of their ethnicity.**
13 **So that they -- the way they form a**
14 **community of interest, in the same way that**
15 **socioeconomics is important but not totally**
16 **diagnostic, race, ethnicity is important but not**
17 **totally diagnostic.**
18 Q Let's -- and I understand your basic
19 proposition is that your opinion is North Muldoon and
20 South Muldoon belong together, and Eagle River and
21 Eagle River belong together, right?
22 **A Yes.**
23 Q And --
24 **A But Eagle River -- Eagle River Valley and**
25 **Eagle River/Chugiak form a community of interest in**

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1 **the same way that North and South Muldoon form a**
2 **community of interest.**
3 Q Did you evaluate the connections between,
4 say, North Muldoon and Mountain View?
5 **A I did not.**
6 Q Those are the two neighborhoods in Anchorage
7 that are -- both have high majority minority vote --
8 voting age population. Did you know that?
9 **A I did, but I would like to interject that**
10 **one of the things that it seems, as I was doing this**
11 **analysis that seemed odd is that the -- certain**
12 **very -- like in Northeast Anchorage, certain very**
13 **densely minority and poverty -- high poverty areas**
14 **were -- like for instance added with -- Northeast**
15 **Anchorage was added with JBER, so it sort of seems**
16 **like the -- like the ARB is saying -- you're saying,**
17 **Mr. Singer, that we've cut the deck in this way, and**
18 **gee, now look at, you know, this -- this hand is low**
19 **and this hand is high and we have to put them**
20 **together in some way.**
21 **The -- the way in which the deck was cut**
22 **makes these distinctions as well. And I know we're**
23 **not going back to looking at House districts, but it**
24 **seems disingenuous to slice the deck one way and then**
25 **claim, oh, this is the deck we have to deal with.**

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1 Q Seems to me that you're saying that Eagle
2 River is a community of interest and therefore its
3 two House districts must be paired together. Is that
4 what you're saying?
5 **A What I'm saying is that by pairing -- by**
6 **splitting up the two Eagle River House districts and**
7 **pairing one of them with JBER, Government Hill, and**
8 **East Anchorage, and the other with District 21, the**
9 **power of the voters of Eagle River is magnified and**
10 **the power of the voters in -- particularly in**
11 **District 21 is diluted.**
12 Q How does a power -- so you have two -- under
13 the constitution, House districts are each supposed
14 to be of equal population, right?
15 **A Yes, uh-huh.**
16 Q So how does -- how does one have power more
17 than the other?
18 **A One -- if we look at 21 and 22, 21 votes --**
19 **is a swing district, seems to vote Republican,**
20 **sometimes Democratic. Sometimes district -- the**
21 **Eagle River district, 22, votes soundly Republican.**
22 **So the -- the diverse voices of District 21, which**
23 **are perhaps what leads it to vote one way or the**
24 **other politically, are completely drowned out by**
25 **the -- or would be completely drowned out by the**

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1 **block voting of District 22.**
2 Q So swing -- the South Muldoon district --
3 and I'll represent to you that South Muldoon district
4 in the 2021 proclamation plan has 95 percent of the
5 same households as the prior South Muldoon district.
6 Is that -- will you accept that representation,
7 subject to check?
8 **A I thought it was more like 97 percent but --**
9 **it's close enough.**
10 Q They're very similar, right?
11 **A Yes.**
12 Q And so when you describe the new district as
13 a swing district, you have some confidence because --
14 because the district lines are so similar, that you
15 have some sense of how the South Muldoon district
16 votes?
17 **A Right. Going back to 2014.**
18 Q And you described it as a swing district.
19 It's elected a Democrat just once in the period you
20 examined back to 2014?
21 **A And it's voted for Democratic -- a majority**
22 **for Democratic candidates about a third of the time,**
23 **if I remember correctly.**
24 Q In the House or in the Senate?
25 **A Looking at -- so I did an analysis where I**

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1 **looked at presidential races, governor's races, U.S.**
2 **House races, U.S. -- excuse me, U.S. House races,**
3 **U.S. Senate races, Alaska House and Alaska Senate,**
4 **and of those -- and then I looked at 2014, '16, '18,**
5 **and 2020. And of those it seemed like about a third**
6 **of the time they had voted for -- in a plurality for**
7 **Democratic candidates.**
8 Q Liz Snyder won that -- she's a Democrat --
9 won that House district by 11 votes last time; is
10 that right?
11 **A I accept that, yes.**
12 Q I think Ms. Wells represented Ms. Snyder in
13 a case that went to the Supreme Court. Did you know
14 that?
15 **A No.**
16 Q And before that, Republican fellow named
17 Lance Pruitt represented that House district for the
18 balance of the decade. Were you aware of that?
19 **A No.**
20 Q So --
21 **A I looked at -- I looked at -- I examined**
22 **that data but I didn't -- I wasn't paying a lot of**
23 **attention to the names. Okay? I was just trying to**
24 **get a general sense of how it voted, so -- and I did**
25 **that analysis a month ago. So some of the finer**

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1 **details are gone.**
2 Q Swing district is another way to say it was
3 highly competitive?
4 **A Yes.**
5 Q Right? It's about half -- half Republican
6 and half Democrat, in terms of the vote outcomes?
7 **A In terms of the vote outcomes, yes.**
8 Q So if -- if half of the folks in the
9 district prefer to vote the same way as you say is an
10 overwhelming majority in Eagle River, those folks
11 aren't being drowned out, right? They're voting with
12 people who they agree with?
13 **A You are making assumptions that I am**
14 **unwilling to make, because I don't know that because**
15 **somebody voted -- because an aggregate vote total was**
16 **one way 50 and a half percent Democrat one time and**
17 **49.5 percent Republican, that the same people voted**
18 **for the same candidates. You know, that seems like**
19 **an unwarranted assumption. So it may be that**
20 **different people are voting for different candidates**
21 **at different times. So that's an unjustifiable**
22 **assumption.**
23 Q But it's a reasonable assumption to assume
24 that one House district is going to drown out
25 another?

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1 **A Yes. Because your -- the difference between**
2 **what I was saying and that you were saying, I was**
3 **saying that we can't -- we are unable to know at a**
4 **detailed level or even in a precinct level how --**
5 **who's voting how. But we can look somewhat in**
6 **aggregate and say it seems to swing in this district**
7 **from one to the other. Whether it has to do with**
8 **candidates or voting blocks, we can't tell.**
9 **It's much easier with Eagle River because**
10 **they vote -- they vote generally one-third Democrat,**
11 **two-thirds Republican, up to one-fifth Democrat,**
12 **almost four-fifths Republican. So they are much more**
13 **predictable. So even if there are some people who**
14 **swing between being Republican and Democrat and**
15 **there's certain noise in the system, because their**
16 **voting block is so much solidier, it's such -- so much**
17 **higher a percent, we can assume that the noise is**
18 **less and that they're going to continue in that way.**
19 **Q And part of that is we don't know how**
20 **minorities are going to vote in South Muldoon or**
21 **anywhere else in Anchorage, right?**
22 **A We don't know who's voting. The ballot box**
23 **is blind.**
24 **MR. SINGER: Julie, I'd like to quickly look**
25 **at the 2013 proclamation plan and District 27.**

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1 **BY MR. SINGER:**
2 **Q Now, this is the -- District 27 is, again,**
3 **somewhere in the mid 90 percent same as what's now**
4 **District 21 in the new proclamation plan; is that**
5 **right?**
6 **A Yes. And we have Stuckagain Heights, that**
7 **bottom area, or it's also called Baxter sometimes,**
8 **is -- Basher -- is that -- on the bottom is not --**
9 **and we're missing Nunaka Park at the top left.**
10 **Q Right. And then -- then that district was**
11 **part of Senate District N, correct? You see --**
12 **A That's what the map says.**
13 **Q And let's --**
14 **MR. SINGER: Julie, let's look at House**
15 **District 28 from the 2013 proclamation.**
16 **BY MR. SINGER:**
17 **Q So since the last proclamation, the South**
18 **Muldoon neighborhood has been paired with House**
19 **District 28 in a Senate district. Do you see that?**
20 **A I do see that.**
21 **Q And House District 28 encompasses the Upper**
22 **Hillside and the Potter Valley neighborhood of**
23 **Anchorage? Are you familiar with those**
24 **neighborhoods?**
25 **A Only on the map.**

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1 **Q And --**
2 **A I've been up to Hillside, but it's been**
3 **years.**
4 **Q And it runs down the communities of**
5 **Turnagain Arm and includes Girdwood; is that right?**
6 **A Uh-huh.**
7 **Q And goes all the way to Portage Valley and**
8 **the northern corner of the Kenai Peninsula; is that**
9 **right?**
10 **A Yes.**
11 **Q So that's a -- the pairing as it's been for**
12 **the last -- since the last proclamation, is it your**
13 **position that was inconsistent with the -- your**
14 **community of interest concept?**
15 **A Yes, it doesn't look like a terribly good**
16 **pairing either, in terms of being a shared community**
17 **of interest.**
18 **Q It was approved -- do you know if it was**
19 **approved by a court after years of litigation?**
20 **A I assume so, yes.**
21 **MR. SINGER: Julie, you can take that**
22 **exhibit down now. Thank you.**
23 **BY MR. SINGER:**
24 **Q We were talking a bit about how folks in**
25 **Anchorage use similar resources. You talked about**

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1 **the airport and the port. Whether you live in Eagle**
2 **River or Muldoon, you go to the same state courthouse**
3 **if you're seeking justice; is that correct?**
4 **A Yes.**
5 **Q And then my last question for you,**
6 **Dr. Hensel, is we're here talking about**
7 **representation in Juneau, specifically in the state**
8 **Senate. Can you identify a state statute or a law**
9 **that's been passed by the Senate in the last decade**
10 **that applies to East Anchorage neighborhoods but does**
11 **not apply to Eagle River or vice versa?**
12 **A No.**
13 **MR. SINGER: All right. Thank you,**
14 **Dr. Hensel. I prefer working with you instead of**
15 **being across the table from you, but always good to**
16 **see you. We appreciate your time this morning.**
17 **That's all I have. Thank you.**
18 **THE WITNESS: Thank you.**
19 **THE COURT: Thank you, Mr. Singer.**
20 **So, Ms. Wells, I'll come to you here in a**
21 **moment, but let me ask if others have questions**
22 **before I give you a chance for redirect.**
23 **MR. BRENA: No questions from Skagway.**
24 **THE COURT: Sorry. I heard Mr. Brena say no**
25 **questions. I think I heard Ms. Stone's voice and I**

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1 THE COURT: Let's take ten minutes here,
2 Ms. Wells.
3 MS. WELLS: Thank you, Your Honor.
4 (Off record.)
5 THE CLERK: Superior Court resumes session.
6 THE COURT: All right. Folks, we're back on
7 record in the redistricting matter, Case 3AN-21-08869
8 Civil. Counsel and parties are all present by Zoom,
9 picking up after a break.
10 Let me -- Ms. Wells, you asked for a break
11 to decide how to proceed. I'm -- this may or may not
12 impact how parties wish to proceed for the rest of
13 the afternoon, but I've given some further thought to
14 the direction that I started with this morning, and
15 hopefully this will clarify things going forward.
16 So I also looked back at the orders,
17 essentially the rulings that I made related to this
18 issue in our previous hearings, which was started by
19 the question I think prompted by Ms. Wells over
20 whether or not Members Bahnke and Borromeo would be
21 permitted to be questioned because they did not
22 address issues relating to East Anchorage in their
23 affidavits.
24 And part of my ruling the other day was yes,
25 some limited questioning could be made of them

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1 because of the fact that their affidavits were
2 submitted after their depositions had been taken.
3 The question that now comes up today that
4 Mr. -- that actually the motion last night raised is
5 whether or not witnesses would allow -- would be
6 allowed to be questioned again by Mr. Singer on
7 redirect after a decision made not to cross-examine
8 them. Essentially the argument being made by
9 Mr. Singer is I should have a right to ask redirect
10 because I'm considering all of the deposition
11 testimony.
12 Both parties make arguments that are well
13 grounded. They're not simple. But I also am going
14 back to the fact that we had set forth a process for
15 everybody to follow in this case early on, which
16 involved the pre-filing of direct testimony.
17 In this case, Mr. Singer, you had the
18 opportunity to pre-file direct testimony. You did so
19 for each of your witnesses. In some cases, in
20 particular with Mr. Torkelson's supplemental
21 affidavit, you have done -- filed a supplemental
22 request to add additional testimony after depositions
23 were taken.
24 What I'm going to say is this: As to
25 redirect of any witnesses that the plaintiffs do not

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1 cross-examine as part of their cases, you can make
2 application essentially to file further direct
3 testimony as a supplemental affidavit, so everybody
4 gets fair notice of what it is. I'm not going to do
5 this in a, essentially a free-for-all this afternoon.
6 I recognize that's the way we would ordinarily do it
7 in trial, but because I have required everybody to
8 pre-file direct testimony, you had that opportunity
9 in this case.
10 If you want to file a supplemental affidavit
11 of each of these witnesses, they would then be
12 potentially subject to recross, I will consider it.
13 I'm not saying I'm going to accept it, but that's the
14 method that I want to do this rather than simply
15 having them called now for redirect based on the
16 deposition testimony.
17 So with that, Ms. Wells, how do you intend
18 to proceed in terms of cross-examination of the
19 board's witnesses this afternoon? You had asked for
20 an opportunity on two of the witnesses at least,
21 which I granted because they were adverse witnesses
22 and you couldn't obtain direct testimony by
23 affidavit. So what's your intention at this point?
24 MS. WELLS: Your Honor, first I want to say
25 I'm very sorry, because I know that we have probably

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1 wasted Board Member Bahnke's time and that wasn't our
2 intention.
3 We went back into the record and looked at
4 the affidavit to determine if we absolutely needed to
5 explore cross based on her affidavit. After doing
6 that, with a few conditions regarding the motion to
7 strike Mr. Torkelson's paragraphs on -- Dr. Hensel's,
8 so take that up.
9 We are not going to call any of the board
10 members for cross-examination. We don't think that
11 it's necessary based on where we are today. And I
12 am, I'm sorry that we inconvenienced them. I know
13 that at least Board Member Bahnke traveled to
14 Anchorage for that purpose, and -- but I do think
15 that that is our determination.
16 I would like to note, however, that with the
17 affidavit of Mr. Torkelson, to the extent that --
18 MR. SINGER: Your Honor -- we'll --
19 MS. WELLS: Mr. Singer --
20 MR. SINGER: We'll just strike -- we'll just
21 solve that problem. It's just -- it's not worth -- I
22 can address it. There's nothing sinister about it,
23 but it's just not -- given this decision by counsel,
24 you can strike the two paragraphs she doesn't like
25 from Mr. Torkelson's supplemental affidavit. We

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1 don't need them.

2 MS. WELLS: That's great. So if there's not

3 opposition to that, Your Honor, I mean, we still do

4 not need to move forward with cross. So I guess what

5 I would say is to the extent we need to authenticate

6 a document, we have some documents that we might

7 submit on a motion for judicial notice that we would

8 have otherwise authenticated through a witness, but I

9 think our case rests in essence with the

10 understanding that we have that right to participate

11 in the trial going forward.

12 THE COURT: All right. So let me just make

13 sure that procedurally I'm clear with where we are.

14 So at this point, the East Anchorage plaintiffs, with

15 the exception of exhibit issues which we'll take up

16 here in a moment, have rested your case.

17 You have elected not to cross-examine any of

18 the board's witnesses that have been offered, and

19 based upon the ruling that I provided earlier subject

20 to Mr. Singer's right to present additional

21 supplemental direct -- and, again, I'm not making a

22 decision on whether or not I'm going to accept it --

23 but based upon that, if I do, I'm going to allow a

24 right to further recross on that supplemental

25 affidavit.

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1 But with that understanding, there's no

2 further testimony for the board to present, as I

3 understand it, relating to the East Anchorage case.

4 MS. WELLS: Your Honor, I apologize for

5 interrupting. I did forget about the documents that

6 are currently under review in camera. So to the

7 extent something stems from that, we would reserve

8 that right as well to be -- to respond to that as

9 needed.

10 THE COURT: All right. And so procedurally

11 then, East -- it seems to me, since there's no cross

12 of the board, nothing further, there's nothing to

13 rebut. So there's no rebuttal by East Anchorage. So

14 what we're left with is questions having to do with

15 exhibits for East Anchorage and/or the board relating

16 to the East Anchorage case. Are we all on the same

17 page?

18 MR. SINGER: Yes.

19 MS. WELLS: Yes, Your Honor.

20 THE COURT: All right. So, Ms. Wells, let

21 me hear from you in terms of -- well, let's start

22 with this: Again, my hope had been, folks, that with

23 the exhibits that we might have some of this resolved

24 by stipulation. Again, I recognize that everybody's

25 working on adrenaline at this point and that probably

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1 was the last thing anybody wanted to deal with.

2 But let's see, for purposes of your exhibits

3 what I'm going to ask, Mr. Singer, is tell me which

4 ones you may have objections to so we can address

5 those.

6 MR. SINGER: Is it -- is it possible we

7 could come back after lunch to do that, Your Honor?

8 I -- you're correct about the limited time we've had.

9 And I just -- I just have -- I was expecting they

10 would come up in the -- you know, in the course of

11 cross. So I just haven't had a chance to get through

12 all of them.

13 THE COURT: Let me do this, folks. Since --

14 because, again, I did tell the folks from Mat-Su no

15 witnesses before Monday, so I think what that means

16 is we're done for the day. And why don't I encourage

17 people to do this. If we go ahead, take a lunch

18 break, you all take a look at the exhibits. Perhaps

19 take a little bit of time to talk to each other about

20 the exhibits, at least with respect to East

21 Anchorage. Maybe we come back at 2:00 and see if

22 there's agreement on the exhibits or not.

23 Alternatively, if you all have agreement on

24 the exhibits, send a quick note to chambers and we'll

25 just do it by stipulation. I don't need to drag you

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1 all back in.

2 MR. SINGER: One question, Your Honor --

3 MS. WELLS: Thank you, Your Honor.

4 MR. SINGER: -- it looks like, for example,

5 their Exhibit 6000 is -- appears, except for a cover

6 e-mail, is just -- it's public testimony which is all

7 already in the record. It's already Bates stamped in

8 the record.

9 So is it -- my understanding generally is

10 that Your Honor wanted us to refer to the record by

11 reference to the Bates stamp. And the record is

12 already the record, so it's in. So I -- you know, is

13 it problematic for the Court to have a bunch of

14 duplication or is it just --

15 MS. WELLS: And, Your Honor, Mr. Singer's

16 point is well taken. I will say that his

17 understanding is the same as ours, so we'll work with

18 Mr. Singer and just remove anything that goes outside

19 the scope as needed.

20 THE COURT: Yeah. Again, if there were --

21 just trying to make sure we had a clean record, if

22 there were issues relating to -- if it's already part

23 of the ARB record, they don't need to be separate

24 exhibits. I understand you may wish to have them

25 separate for demonstrative purposes to question a